

REMARKS

1. Status of Claims

This communication is responsive to the Office Action dated May 7, 2004. A petition for extension of time with the requisite fee is being filed concurrently herewith.

In the Office Action of May 7, 2004, the Examiner objected to the drawings because they were informal. In addition, the Examiner rejected claims 1-3 and 5 under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 5,165,707 to Morimanno, Sr. et al. The Examiner further rejected claims 8-12 under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 5,258,893 to Finneyfrock. The Examiner additionally rejected claims 4, 6, and 7 under 35 U.S.C. § 103(a) as being unpatentable in view of Morimanno in combination with U.S. Pat. No. 6,698,810 to Lane. Lastly, the Examiner rejected claims 8, 12, 13, 15, 16, and 17 under 35 U.S.C. § 103(a) as being unpatentable in view of Morimanno in combination with Finneyfrock. For the reasons stated below, Applicants respectfully traverse these rejections.

2. Objections to the Drawings

The Examiner objected to the drawings because they were informal. In response, formal drawings are being concurrently filed herewith. Accordingly, Applicants respectfully request the objections to the drawings be withdrawn.

3. Rejection of Claims Under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a)

Claim 1, as amended, is not anticipated by Morimanno since the reference does “not disclose that the lower frame section includes a pair of upstanding members wherein the tubular members are attached to the upstanding members,” as acknowledged by the Office Action. Office Action, at 5.

Further, assuming the proposed combination of Morimanno and Lane were proper, which it is not, it too fails to teach the headache rack of Claim 1, as amended. The proposed combination does not teach a headache rack having 1) an upper frame section; 2) a lower frame section, the lower frame section including at least two bar members extending horizontally across the frame section and a pair of upstanding members positioned inwardly from the ends of the bar members, and 3) a pair of tubular members attached to the upstanding members of the lower frame section. Such a lower frame section lends to the stability of the overall headache rack as well as the protection of the driver and any passengers from the load being carried while allowing the height of the rack to be adjusted. Thus, for this reason, the rejection of claim 1 should be withdrawn and the claim, along with claims 5-7 dependent thereon, should be passed to issue.

Similarly, Claim 8, as amended, is not anticipated or rendered obvious by Finneyfrock or Morimanno. Claim 8 now requires a headache rack that a rack frame that includes a lower frame section, a pair of tubular members mounted to the lower frame section, and an upper frame section mating with the tubular members. The lower frame section includes a lower tubular member extending horizontally across the section and a pair of upstanding

members positioned inwardly from the ends of the lower tubular member. Internal wiring pathways are provided through the upper frame section, the tubular members, and the upstanding members and the lower tubular member of the lower frame section. Neither of the references relied upon by the Office Action teaches a headache rack with a lower frame section that includes a lower tubular member and a pair of upstanding members. Such a lower frame section lends to the stability of the overall headache rack as well as the protection of the driver and any passengers from the load being carried while providing an internal wiring pathway. Thus, for this reason, the rejection of claim 8 should be withdrawn and the claim, along with claims 9-11 and 15-18 dependent thereon, should be passed to issue.

Lastly, Applicants submit new claim 19 for consideration. None of the references cited by the Office Action disclose a headache rack that is adjustable in height and provides an internal wiring pathway while protecting the vehicle's occupants from the load being carried. For this reason, Applicants believe that claim 19 be passed to issue.

4. Conclusion

Applicants submit that the application is now in condition for allowance and respectfully request early notice to this effect. If any questions or issues remain, the Examiner is invited to contact the undersigned at her direct dial number (312) 913-2366.

Respectfully submitted,

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